

December 3, 2007

Mr. David Myers GMB, LLC 400 High Street Seaford, DE 19973

RE: PLUS review – PLUS 2007-10-03; Harbeson Mini Storage

Dear Mr. Myers:

Thank you for meeting with State agency planners on October 31, 2007 to discuss the proposed plans for the Harbeson Mini Storage project to be located on Route 9 near the intersection with Harbeson Road.

According to the information received, you are seeking a rezoning of 8.05 acres from AR-1 to C-1 for an 85,921 sq. ft. mini storage building.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as Sussex County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

The following are a complete list of comments received by State agencies:

## Office of State Planning Coordination - Contact: Bryan Hall 739-3090

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is in a low density area according to the Sussex County comprehensive plan. The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.

This project represents a major land development that will result in 85,921 sq. ft. of commercial zoned property in an Investment Level 4 area according to the 2004 Strategies for State Policies and Spending. This proposal is located in Investment Level 4 according to the Strategies for State Policies and Spending, and is within the Low Density area according to the Sussex County certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4 areas. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed is likely to bring commercial development to an area where the State has no plans to invest in infrastructure upgrades or additional services. These residents will need access to such services and infrastructure as schools, police, and transportation. To provide some examples, the State government funds 100% of road maintenance and drainage improvements for the transportation system, 100% of school transportation and paratransit services, up to 80% of school construction costs, and about 90% of the cost of police protection in the unincorporated portion of Sussex County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases.

Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed development.

#### Division of Historical and Cultural Affairs - Contact: Terrance Burns 739-5685

In reference to this particular parcel (property/project area), the historic resources at State Historic Preservation Office of the Division of Historic & Cultural Affairs did show and indicate the following:

- This parcel is in a Level 4 area. The State Historic Preservation Office is not in favor of or will endorse any type of construction or building project in a Level 4 Area, and is in agreement with the other agencies, divisions and departments that it would not be appropriate.
- Also, there is/was a 20th-century dwelling complex (S-3574) very close to this parcel, or either partially on or within this parcel (property/project area). This dwelling (S-3574) is located off Route 18, and it is/was a 20th-century (1900s) along with a few scattered out buildings
- Since this parcel is in an environment sensitive area, it is a possibility that there could be a potential archaeological site on this parcel, or nearby.
- The developer should be aware of Delaware's Unmarked Human Remains Act of 1987, which governs the discovery and disposition of such remains. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.
- This parcel is in a vicinity where it is a possibility that there could be a potential archaeological site on this parcel, or nearby it. Prior to any demolition or ground-disturbing activities, or before any type of construction proceeds the developer may want to hire an archaeological consultant to check or examine this parcel/property (project area) for the possibility of a cemetery here, or to see if there are any archaeological sites on it.

The State Historic Preservation Office of the Division of Historic & Cultural Affairs recommends and do hope that the developer will take these comments in to consideration. Also, if the developer would like to discuss this in further detail, contact Mr. Terence Burns, Information Resource Specialist, at the State Historic Preservation Office of the Division of Historic & Cultural Affairs at (302) 736-7400.

## **Department of Transportation – Contact: Bill Brockenbrough 760-2109**

Because this development is proposed for a Level 4 Area, it is inconsistent with the *Strategies for State Policies and Spending*. As part of our commitment to support the

Strategies, DelDOT refrains from participating in the cost of any road improvements needed to support this development and is opposed to any road improvements that will substantially increase the transportation system capacity in this area. DelDOT will only support taking the steps necessary to preserve the existing transportation infrastructure and make whatever safety and drainage related improvements are deemed appropriate and necessary. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services.

DelDOT strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in approved Comprehensive Plans. We encourage the use of transfer of development rights where this growth management tool is available.

If this development proposal is approved, notwithstanding inconsistencies with the relevant plans and policies, DelDOT will provide further technical review and comments.

# <u>The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071</u>

#### **Investment Level 4 Policy Statement**

This project is proposed for an Investment Level 4 area as defined by the <u>Strategies for State Policies and Spending</u> and is also located outside of a designated growth area in the relevant municipal and county certified comprehensive plans. According to the <u>Strategies</u> this project is inappropriate in this location. In Investment Level 4 areas, the State's investments and policies, from DNREC's perspective, should retain the rural landscape and preserve open spaces and farmlands. Open space investments should emphasize the protection of critical natural habitat and wildlife to support a diversity of species, and the protection of present and future water supplies. Open space investments should also provide for recreational activities, while helping to define growth areas.

Additional state investments in water and wastewater systems should be limited to existing or imminent public health, safety or environmental risks only, with little provision for additional capacity to accommodate further development.

With continued development in Investment Level 4 areas, the State will have a difficult, if not impossible, time attaining water quality (e.g., TMDLs) and air quality (e.g., non-attainment areas for ozone and fine particulates) goals. Present and future investments in green infrastructure, as defined in Governor Minner's Executive Order No. 61, will be

threatened. DNREC strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in certified Comprehensive Plans. We encourage the use of transfer of development rights where this growth management tool is available.

This particular development certainly compromises the integrity of the State Strategies and the preservation goals inherent in many of DNREC's programs. Of particular concern are the increase in impervious cover, the loss/fragmentation of 1.86/3.81 acres of forest or 49%, and the project's proximity to Beaverdam Creek. While mitigating measures such as conservation design, central wastewater systems instead of individual on-site septic systems, and other best management practices may help mitigate impacts from this project, not doing the project at all is the best avenue for avoiding negative impacts. As such, this project will receive no financial, technical or other support of any kind from DNREC. Any required permits or other authorizations for this project shall be considered in light of the project's conflict with our State growth strategies.

#### **Soils**

According to the Sussex County soil survey, Rosedale, Pepperbox-Rosedale, and Zekiah were mapped in the immediate vicinity of the proposed construction. Rosedale is a well-drained upland soil that, generally, has few limitations for development. Zekiah is a very poorly-drained wetland associated (hydric) floodplain soil that has severe limitations for development. Zekiah soils are considered unsuitable for development and should be avoided.

#### Wetlands

According to the Statewide Wetland Mapping Project (SWMP) mapping, palustrine forested riparian wetlands were mapped in the southeastern corner of this parcel.

Impacts to Palustrine wetlands are regulated by the U.S. Army Corps of Engineers (USACE, or "the Corps") through Section 404 of the Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Corps also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Management Program (DCMP) Section. Each of these certifications represents a separate permitting process. Please be advised that nationwide permits have been suspended in Delaware and are pending further coordination with the Corps. Therefore, contrary to past practices, Coastal Zone Management approval can no longer be assumed. Individual certifications must be granted from the DCMP office for each project intending to utilize a Nationwide Permit.

For more information on the Federal Consistency process, please contact the DCMP office at 302.739.9283. To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-9943 to schedule a meeting.

It is recommended that vegetated buffers should be employed from the edge of the wetland complex and other water bodies on site. It is important to note that both DNREC and the Corps discourage allowing lot lines to contain wetlands and associated buffers, to minimize potential cumulative impacts resulting from unauthorized and/or illegal activities and disturbances that can be caused by homeowners.

#### **Impervious Cover**

Based on a review of the PLUS application form, post-construction surface imperviousness was projected to reach 67 percent. Since no site plan was submitted, it is not clear whether this is a realistic assessment of this project's post-construction estimate of surface imperviousness.

When calculating surface imperviousness, it is important to consider all created forms of constructed surface imperviousness (i.e., rooftops, sidewalks, roads, and stormwater management ponds) in the calculation for surface imperviousness; otherwise, an inaccurate assessment of this project's environmental impacts will result. Therefore, it is important that the calculation for surface imperviousness include all the above-mentioned forms of surface imperviousness.

Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed's overall water quality. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials ("pervious pavers") in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation or additional tree plantings are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.

#### **TMDLs**

Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Broadkill watershed. A TMDL is the maximum level of pollution allowed for a given pollutant below which a "water quality limited water body" can assimilate and still meet water quality standards to the extent necessary

to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are required by federal law, states are charged with developing and implementing standards to support these desired use goals. In the Broadkill watershed, "target-rate-nutrient reductions" of 40 percent will be required for nitrogen and phosphorus. Additionally, "target-rate-reductions" of 75 percent will be required for bacteria.

## **TMDL Compliance through the PCS**

As indicated above, Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been proposed for the Broadkill watershed. The TMDL calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 75 percent reduction in bacteria from baseline conditions. A Pollution Control Strategy (PCS) will be used as a regulatory framework to ensure that these nutrient reduction targets are attained. The Department has developed an assessment tool to evaluate how your proposed development may reduce nutrients to meet the TMDL requirements. Additional nutrient reductions may be possible through the implementation of BMPs such as increasing the amount of passive, wooded open space (planted with native woody and herbaceous vegetation), use of pervious paving materials to reduce surface imperviousness, connection to central sewer (if available), and the deployment of greentechnology stormwater management treatment technologies. Contact Lyle Jones at 302-739-9939 for more information on the assessment tool.

## **Water Supply**

The project information sheets state that an individual on-site well will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule.

PLUS 2007-10-03 Page 8 of 13

Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case, there is a Groundwater Management Zone B -1 named Clean Delaware, Inc. located on the southeast part of the property within 1000 feet of the proposed project.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

#### **Drainage and Stormwater**

The DNREC Sediment and Stormwater Program ensure sediment and erosion control plans and stormwater plans comply with local land use ordinances and policies, including the siting of stormwater management facilities. However, we do not support placement in resource protection areas or removal of trees for the sole purpose of placement of a stormwater management facility/practice.

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site over 5,000 square feet. Because the Sediment and Stormwater Program is in the process of revising its state regulations it is a good idea to contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District.

Contact Jessica Watson at the Sussex Conservation District at (302) 856-7219 for details regarding submittal requirements and fees.

Because of the parcel's location in an impaired watershed and the amount of impervious surface typically associated with the development of a commercial site, the applicants should incorporate green technology best management practices and low impact development practices to reduce stormwater flow and meet water quality goals.

#### **Rare Species**

DNREC has not surveyed the project area, therefore it is unknown if there are State-rare or federally listed plants, animals or natural communities at this project site that would be affected by project activities. They do have records of Poanes massasoit (mulberry wing), a State-endangered butterfly, adjacent to the project area. This species is typically found in seepage wetlands dominated by Carex stricta (tussock sedge) in open areas to partially wooded areas. If Carex stricta occurs on the property, we recommend that efforts to avoid impacts be made. This endangered butterfly could potentially benefit if Carex stricta was planted during revegetation efforts.

#### Forest Preservation/Wildlife Habitat Impacts

The forested area on this site is important for providing wildlife habitat as well as forming part of the riparian buffer for Beaverdam Creek. The forest as it exists likely provides a wildlife travel corridor along Beaverdam Creek as well as a connection to larger forest blocks to the west. DNREC highly recommends that efforts be made to place all or most of the footprint of the project outside of the forest boundaries. The GIS database and wetland maps indicate part of this forested area contains wetlands. Forested wetlands can support an array of plant and animal species both rare and common and should be protected as well.

Cumulative forest loss throughout the State is of utmost concern to the Division of Fish and Wildlife which is responsible for conserving and managing the State's wildlife (see www.fw.delaware.gov and the Delaware State Code, Title 7). Because of an overall lack of forest protection, we have to rely on applicants and/or the entity that approves the project (i.e. counties and municipalities) to consider implementing measures that will aide in forest loss reduction.

#### **Underground Storage Tanks**

There are two inactive LUST site(s) located near the proposed project:

Allen Family Foods, Facility # 5-000059, Project # S9110224 3 Star Deli, Facility # 5-000136, Project # S9802028

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated

contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

#### **State Fire Marshal's Office – Contact: Duane Fox 856-5298**

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation:

# a. Fire Protection Water Requirements:

➤ Most Mini Storage buildings in excess of 2,500 square feet in area are required to be protected by an automatic sprinkler system. A storage tank and pump arrangement may be needed in order to provide adequate supply to the sprinkler system.

# b. Fire Protection Features:

➤ Buildings greater than 10,000 sq.ft., 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements

# c. Accessibility:

- All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road from Route 9 must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also,

- please be advised that parking is prohibited in the cul-de-sac or turn around.
- ➤ The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- ➤ The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

## d. Required Notes:

- ➤ Provide a note on the final plans submitted for review to read "All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations"
- Proposed Use
- ➤ Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- > Square footage of each structure
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- ➤ Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: <a href="www.statefiremarshal.delaware.gov">www.statefiremarshal.delaware.gov</a>, technical services link, plan review, applications or brochures.

#### Department of Agriculture - Contact: Scott Blaier 698-4500

The Department is opposed to development in areas designated as Investment Level 4 under the *Strategies for State Policies and Spending*. The *Strategies* do not support isolated development of these areas. The intent of this plan is to preserve the agricultural lands, forestlands, recreational uses, and open spaces that are preferred uses in Level 4 areas. The Department of Agriculture opposes development which conflicts with the preferred land uses, making it more difficult for agriculture and forestry to succeed, and increases the cost to the public for services and facilities.

More importantly, the Department of Agriculture opposes this project because it negatively impacts those land uses that are the backbone of Delaware's resource industries - agriculture, forestry, horticulture - and the related industries they support. The crucial economic, environmental and open space benefits of agriculture and forestry are compromised by such development.

The Delaware Department of Agriculture supports growth which expands and builds on existing urban areas and growth zones in approved State, county and local plans. Where additional land preservation can occur through the use of transfer of development rights, and other land use measures, we will support these efforts and work with developers to implement these measures. If this project is approved we will work with the developers to minimize impacts to the agricultural and forestry industries.

#### Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the "Right Tree for the Right Place" for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

#### Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent landuse activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

#### Public Service Commission - Contact: Andrea Maucher 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

#### **Department of Education – Contact: John Marinucci 735-4055**

DOE recognizes that this development project is in level 4 of the State Strategies for Policies and Spending and as such, DOE does not support the approval of this project. This proposed development is in the Indian River School District. This rezoning and site plan request is commercial in nature and as such DOE has no comments beyond comment number 1 above.

## Sussex County - Contact: Richard Kautz 855-7878

The developer should consider a landscaped buffer along the Route 9 frontage.

This year Sussex County will be considering implementation of a Source Water Protection Program required by the State. Depending on the requirements adopted by the County Council this project might be affected. Any public use well location should insure that the wellhead protection area is entirely on site.

The Sussex County Engineer Comments:

Individual on-site wastewater systems are proposed to serve the proposed project. The proposed project is in the North Coastal Planning Area, but is not in an area where Sussex County expects to provide sewer service. Sussex County has no objection to the project being served by individual on-site systems.

For questions regarding these comments, contact Rob Davis, Sussex County Engineering Department at (302) 855-7820.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

Constance C. Holland, AICP

(Justines C. Halled

Director

CC: Sussex County